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ALEXANDER L. STEVAS,
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(4)

CASE NO. 84-658

In the Supreme Court

OF THE

United States

OCTOBER 1984 TERM

LEWIS W. SHURTLEFF, INC., and
FRONTIER PROPERTIES, INC.,
Debtors.

THOMAS D. ELLIOTT, etc., et al.,
Appellees,

vs.

FRONTIER PROPERTIES LP 123, etc., et al.,
Appellants.

FRONTIER PROPERTIES LP 101, etc., et al.,
Appellants,

vs.

LEWIS WARREN SHURTLEFF, et al.,
Appellees.

STANDING COMMITTEE ON DISCIPLINE, etc.,
Appellees,

vs.

JOHN M. ROSS,
Appellant.

On Appeal From The United States Court of Appeal For The Ninth Circuit

MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM THE JUDGMENTS

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Pursuant to Rules 16.1(a) and (c) of this Court, Joel C. Estes moves to dismiss the appeal, or alternatively, affirm the judgments sought to be reviewed.

FACTS

As set forth in Appellants' jurisdictional statement, this is an appeal from one order and a separate judgment entered by the United States Court of Appeals for the Ninth Circuit. The order was entered on June 14, 1984 and dismissed the appeals in three civil actions. In its order the Court of Appeals dismissed the appeals on the grounds, *inter alia,* that Appellants' counsel failed to prosecute the appeals in a timely manner. That Court further suspended Appellants' counsel from practice before the Court of Appeals. Judgment was entered on June 25, 1984, affirming the lower court order which had suspended Appellant's counsel from practice before the District Court.

ARGUMENT

This appeal should be dismissed. Rule 16.1(a) states:

> The Court will receive a motion to dismiss an appeal on the ground that the appeal is not within this Court's jurisdiction, or because it is not taken in conformity with statute or with these rules.

28 U.S.C. Section 1254 provides:

> Cases in the Courts of Appeal may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;
>
> (2) By appeal by a party relying on state statute held by a court of appeals to be invalid as repugnant to the Constitution, treaties or laws of the United States, but such appeal shall preclude review by writ of certiorari at the instance of such appellant on the review on appeal shall be restricted to the Federal questions presented; . . . .

Appellants have not petitioned for certiorari; the Court of Appeals did not hold any state statute unconstitutional. Therefore, this appeal should be dismissed as either beyond this Court's jurisdiction or not taken in conformity with statute.

In the alternative, the judgments entered below should be affirmed. Rule 16(c) provides that:

> The Court will receive a motion to affirm the judgment sought to be reviewed on appeal from a federal court on the ground that it is manifest that questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

In this case an order was entered on the ground that Appellants failed to prosecute their appeals and on the ground that their attorney failed to obey the court's rules. The ensuing judgment merely affirmed an order suspending Appellants' counsel from practice. Under these circumstances, it is manifest that the questions raised by this appeal are so unsubstantial they need no further argument.

CONCLUSION

This appeal is not authorized by law. Moreover, the questions raised by the Court of Appeals' Order and Judgment are manifestly unsubstantial. Accordingly, the appeal should be dismissed, or in the alternative, the order and judgment should be affirmed.

Respectfully submitted,

CHARLES H. DICK, JR.
Attorney for Joel C. Estes

MACDONALD, HALSTED &
LAYBOURNE
of counsel